

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

No. CR S-02-0151-MCE-CMK  
CIV S-07-0247-MCE-CMK

Respondent,

vs.

ORDER

SCOTT MICHAEL VOGELSANG,

Movant.

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Movant, a federal prisoner proceeding pro se, brings this motion to correct or set aside a criminal judgment pursuant to 28 U.S.C. § 2255 (Doc. 194). Pending before the court is movant's motion, filed on February 7, 2007. Also pending before the court are movant's motions for appointment of counsel (Docs. 185 & 186), motion to correct the pre-sentence report (Doc. 188), and motion for leave to conduct discovery (Doc. 195). Movant's motion for release on bail (Doc. 189) will be addressed separately.

The court has examined the motion as required by Rule 4 of the Federal Rules

1 Governing Section 2255 Proceedings.<sup>1</sup> It does not plainly appear from the motion, any attached  
2 exhibits, or the record of prior proceedings, that movant is not entitled to relief. See id.  
3 Respondent, therefore, will be directed to file a response to movant's motion. See id. If  
4 respondent answers the motion, such answer must comply with Rule 5 of the Federal Rules  
5 Governing Section 2255 Proceedings. Specifically, an answer shall be accompanied by any and  
6 all transcripts or other documents relevant to the determination of the issue(s) presented in the  
7 petition. See id.

8 Movant has requested the appointment of counsel (Docs. 185 & 186). There  
9 currently exists no absolute right to appointment of counsel in § 2255 proceedings. See Irwin v.  
10 United States, 414 F.2d 606 (9th Cir. 1969). However, 18 U.S.C. § 3006A authorizes the  
11 appointment of counsel at any stage of the case "if the interests of justice so require." Rule 8(c),  
12 Rules Governing Section 2255 Proceedings. In the present case, the court does not find that the  
13 interests of justice would be served by the appointment of counsel at this time.

14 Movant has also seeks correction of the pre-sentence report (Doc. 188). A review  
15 of the minutes from the September 6, 2005, sentencing hearing reflects, however, that the same  
16 motion was made by counsel and denied. In any event, the time to seek modification or  
17 correction of the pre-sentence report has long since passed. Therefore, the instant motion is also  
18 denied.

19 Finally, movant seeks leave of court to conduct discovery. Respondent will be  
20 required to respond to this motion at the same time a response to the § 2255 motion is filed.

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. Respondent is directed to file a response to movant's motion within 30  
23 days from the date of service of this order;

24 2. Movant's traverse or reply (if respondent files an answer to the motion), if

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25 <sup>1</sup> This matter has been referred to the undersigned pursuant to 28 U.S.C. § 636 and  
26 Rule 8(b) of the Federal Rules Governing Section 2255 Proceedings.

1 any, or opposition or statement of non-opposition (if respondent files a motion in response) shall  
2 be filed and served within 30 days of service of respondent's response;


3           3.       The Clerk of the Court shall serve a copy of this order, together with a  
4 copy of movant's motion, on the United States Attorney or his authorized representative;

5           4.       Movant's motions for appointment of counsel are denied without  
6 prejudice;

7           5.       Movant's motion to correct the pre-sentence report is denied; and

8           6.       With the response to the § 2255 motion, respondent shall also file a  
9 response to movant's motion for leave of court to conduct discovery.

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11 DATED: February 27, 2007.

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14 **CRAIG M. KELLISON**  
15 UNITED STATES MAGISTRATE JUDGE  
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